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EXAMINER

ENGLAND, DAVID E

ART UNIT

PAPER NUMBER

2143

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/518,221

Applicant(s)

FLETCHER ET AL.

Examiner

David E. England

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 25 August 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 16-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 16-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 March 2000 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- 1) ☐ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date. _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. Claims 16 – 20 are presented for examination.

Drawings

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the view that a stand-alone RMON probe would have, must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the “information being selected from the group consisting of:

4. (1) Network protocol stack configurations and NIC configurations including problematic situations;

5. (2) Application information ranging from what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc.;

6. (3) System information such as memory, CPU, disk space, current resource utilizations, etc.; and

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7. (4) System performance metrics.” must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled “Replacement Sheet” in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

8. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

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9. Claim 16 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The main body of the specification does not suggest a view of any type and it is unsure where this “view” will be displayed on.

10. Claim 17 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation of “existing network application management software” cannot be found in the main body of the specification.

11. Claim 18 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The limitation of “an enhanced dRMON Manager” cannot be found in the main body of the specification.

12. Claim 20 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The newly added limitation of,

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“said information being selected from the group consisting of:”, is not disclosed in the specification. This limitation leaves one to believe that there is an actual selection process accruing in the invention, which is not found.

13. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

14. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

15. The term "and/or" in claim 16 is a relative term which renders the claim indefinite. The term "and/or" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is suggested that this be changed to “and” to define the more specifically what is done in the specification and would put the application in better condition for allowance.

16. Claim 16 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitation of “dRMON proxy or collector” is described in the specification in a way that would leave one to believe that they are one in the same. The Applicant is asked to

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clarify the difference or similarities of the two limitations with support in the main body of the specification.

17. Claim 17 recites the limitation "said proxy" and "the proxy". There is insufficient antecedent basis for this limitation in the claim. The invention seems to teach the use of a dRMON proxy and should therefore amend as such.

18. Claim 20 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

19. Claim 20 recites the limitation "the group" in the newly amended section of claim 20. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

20. Claim 16 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab et al. U.S. Patent No. 6047321 (hereinafter Raab) in view of Desai et al. (5781703) (hereinafter Desai).

21. Referencing claim 16, as closely interpreted by the Examiner, Raab teaches a method for distributed remote network monitor (dRMON) in a LAN comprising:

22. ESs to be monitored, said dRMON agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives, (e.g. col. 4, lines 5 – 57);

23. on a periodic basis having the dRMON agents forward statistics and/or captured packets to a dRMON proxy or collector, existing somewhere on the LAN, (e.g. col. 4, lines 5 – 57); and

24. combining received agent data thereby creating at the dRMON proxy a view that a prior, art stand-alone RMON probe would have if all the ES were on the same LAN segment with it, (e.g. col. 4, lines 5 – 57), but does not specifically teach deploying dRMON agents within ESs to be monitored. Desai teaches deploying dRMON agents within ESs to be monitored, said dRMON agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives, (e.g. col. 2, line 45 – col. 3, line 36, “*Intelligent Remote Agents 18 comprise computer programs that are tangibly embodied in or readable from a computer-readable medium or carrier, e.g. fixed and/or removable data storage and/or data communication devices. These computer programs may be retrieved from such devices into the random access memory of one or more of the computer systems 12 for execution. These computer programs comprise instructions which, when read and executed by a computer system 12, cause the computer system 12 to perform the steps necessary to execute the steps or elements of the present invention.*” & col. 6, line 62 – col. 7, line 26). It would have been obvious to one of ordinary skill in the art at the time the invention was made to combine Desai with Raab

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because it would be more cost effective and could have less areas for errors if the agents resided in the end system that it was collecting information from as opposed to having two devices. This would also result in only having to utilize software for the agent and not hardware and software on a separate device.

25. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Raab (6047321) in view of Desai (5781703) in further view of Dobbins et al. (5790546) (hereinafter Dobbins).

26. As per claim 17, as closely interpreted by the Examiner, Raab and Desai do not specifically teach said proxy can mimic the SNMP responses of a prior art non-distributed RMON probe so that existing network application management software can interact with the proxy as though said proxy were a prior art probe. Dobbins teaches said proxy can mimic the SNMP responses of a prior art non-distributed RMON probe so that existing network application management software can interact with the proxy as though said proxy were a prior art probe, (e.g. col. 16, lines 4 – 26). It would have been obvious to one skilled in the art at the time the invention was made to combine Dobbins with the combine system of Raab and Desai because it would be more efficient for a system to utilize the same functions that a probe has and apply them to a proxy so have all functions of both devices in one device that could save time on transmission time and prevent errors in transmissions to and from the proxy and probe. Furthermore, Applicant discloses that this has been used in the prior art as stated in the claim itself.

27. As per claim 18, as closely interpreted by the Examiner, Raab and Desai teach all that is disclosed above but does not specifically teach in an dRMON Managers a user is provided with the ability to combine ports and hosts in order to create Virtual LAN (VLAN) definitions to cause the monitoring function to behave as though all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON collector in this embodiment creating and maintaining several such views with each appearing as one interface to RMON Management applications. Dobbins teaches in an dRMON Managers a user is provided with the ability to combine ports and hosts in order to create Virtual LAN (VLAN) definitions to cause the monitoring function to behave as though all selected hosts were on the same LAN segment being served by the same RMON probe with the dRMON collector in this embodiment creating and maintaining several such views with each appearing as one interface to RMON Management applications, (e.g. col. 9, line 13 – col. 10, line 5 & col. 17, lines 28 – 67). It would have been obvious to one skilled in the art at the time the invention was made to combine Dobbins with the combine system of Raab and Desai because it would be more convenient for a system to utilize the functions of VLAN's so a user in a specific user group does not have to be connected to a same segment as the group to which it belongs to. Therefore allowing a new user and existing users the convenient of being stationed anywhere in the system and allowing the system to perceive as though the user was on the same segment.

28. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab (6047321) in view of Desai (5781703) in further view of Umetsu (5751963).

29. As per claim 19, as closely interpreted by the Examiner, Raab and Desai do not specifically teach said dRMON agents perform continual response time monitoring and forward the results to the dRMON Proxy. Umetsu teaches said dRMON agents perform continual response time monitoring and forward the results to the dRMON Proxy, (e.g. col. 4, line 50 – col. 5, line 14). It would have been obvious to one skilled in the art at the time the invention was made to combine Umetsu with the combine system of Raab and Desai because it would be more efficient for a system to have continual updates on network activity that could aid in the efficiency of network data transferring in network peak times.

30. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Raab (6047321) in view of Desai (5781703) in further view of Nugent (6076131) in further view of Engel et al. (6115393) (hereinafter Engel).

31. As per claim 20, as closely interpreted by the Examiner, Raab and Desai do not specifically teach said agent software utilizes native OS APIs to gather information about the ES that could not be gathered via packet capture and analysis, said information being selected from the group consisting of:

32. (1) Network protocol stack configurations and NIC configurations including problematic situations;

33. (2) Application information ranging from what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc.;

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34. (3) System information such as memory, CPU, disk space, current resource utilizations, etc.; and

35. (4) System performance metrics.

36. Nugent teaches said agent software utilizes native OS APIs to gather information about the ES that could not be via packet capture and analysis, such as:

37. (1) Network protocol stack configurations and NIC configurations including problematic situations, (e.g. col. 9, lines 30 – 61). It would have been obvious to one skilled in the art at the time the invention was made to combine Nugent with the combine system of Raab and Desai because it would be more efficient for a system to analyze information that could have errors in the system so to lower the probability of a system crashing or transmitting faulty information across the network. Engel teaches

38. (2) Application information ranging from what protocols an application is bound to, to its manufacturer, version, file date and time, DLLs used and their versions, etc., (e.g. col. 14, lines 26 – 65);

39. (3) System information such as memory, CPU, disk space, current resource utilizations, etc. , (e.g. col. 14, lines 26 – 65); and

40. (4) System performance metrics, (e.g. col. 15, line 41 – col. 16, line 56). It would have been obvious to one skilled in the art at the time the invention was made to combine Engel with the combine system of Raab, Desai and Nugent because it would be more efficient for a system to gather as much information about a system and its ES so if an error or an upgrade is needed it would be more convenient to find the system that require these fixes or modifications.

Response to Arguments

41. Applicant's arguments filed 08/25/2004 have been fully considered but they are not persuasive.

42. In the Remarks, Applicant argues in substance that the phrase "view that stand alone RMON probe would have" is only intended to describe an aspect of the functionality of the embodiments' of the Applicant's invention as are set forth in the Claims and thus is not amenable to structural illustration as is suggested by the Examiner.

43. As to part 1, Examiner notes Applicants' statement regarding the limitation of "view that stand alone RMON probe" would have but disagrees with the Applicants' statement. The claim language can still be interpreted as such and it would be in the best interest of the Applicants to change the claim language to a phrase that would not make one interpret this limitation in the same light as the Examiner could.

44. In the Remarks, Applicant argues in substance that the use of alternative language such as "or" is not improper (see MPEP 2173.05(h)).

45. As to part 2, the Examiner would like to point out to the Applicants that the phrase "or" is not the issue, rather the phrase "and/or" which is not in the stated in MPEP 2173.05(h) as being able to use in this situation. Furthermore, the section from the MPEP that the Applicants seem to

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be referencing, "II "OR" TERMINOLOGY", appears to be referring to a selection from a list and not the phrase "and/or".

46. In the Remarks, Applicant argues in substance that Raab et al. does not anticipate nor render obvious a method for distributed remote network monitoring comprising, "deploying dRMON agents within ESs to be monitored, said agents implementing RMON functional groups but only capturing and analyzing packets that their native ES sends or receives".

47. As to part 3, in response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

48. In the Remarks, Applicant argues in substance that Desai et al. does not overcome the shortcomings of Raab et al. noted above.

49. As to part 4, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

50. In the Remarks, Applicant argues in substance that Dobbins et al. does not overcome the shortcomings of Raab et al. and Desai et al. noted above. Nowhere, does the Dobbins et al.

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reference show or suggest monitoring data in end systems (ESs) as is recited in Applicant's Claim 16.

51. As to part 5, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

52. In the Remarks, Applicant argues in substance that Umetsu does not overcome the shortcomings of Raab et al. and Desai et al. noted above. Nowhere, does the Umetsu reference show or suggest monitoring data in end systems (ESs) as is recited in Applicant's Claim 16.

53. As to part 6, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

54. In the Remarks, Applicant argues in substance that Nugent et al. further in view of Engel et al. does not overcome the shortcomings of Raab et al. and Desai et al. noted above. Nowhere, does either the Nugent et al. or Engel et al. reference show or suggest monitoring data in end systems (ESs) as is recited in Applicant's Claim 16.

55. As to part 7, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David E. England whose telephone number is 571-272-3912. The examiner can normally be reached on Mon-Thur, 7:00-5:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David A. Wiley can be reached on 571-272-3923. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

David E. England
Examiner
Art Unit 2143

De



DAVID WILEY
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